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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

NML CAPITAL LTD.,

Plaintiff,

v.

THE REPUBLIC OF ARGENTINA,

Defendant.

CASE NO.: 2:14-cv-00492-RFB-VCF

**NML CAPITAL, LTD.'S MOTION FOR  
LEAVE TO FILE ITS MEMORANDUM IN  
OPPOSITION TO MOTION TO VACATE  
AND IN SUPPORT OF MOTION FOR  
SANCTIONS AND EXHIBITS "D" AND  
"E" THERETO UNDER SEAL**

Plaintiff NML Capital, Ltd. ("NML"), by and through its attorneys of record Brownstein Hyatt Farber Schreck, LLP, and Dechert, LLP, hereby submits this Motion for Leave to File the Memorandum and Opposition to Motion to Vacate and In Support of Motion for Sanctions ("Motion for Sanctions") and Exhibits "D" and "E" Thereto Under Seal ("Motion to Seal"). As

NML's proposed Motion for Sanctions quotes from, refers to and attaches certain documents that MF Legal Services F/K/A/ Mossack Fonseca & Co. ("Mossack Fonseca") may claim are privileged, in an abundance of caution, the Court should permit NML to file those documents and its Motion for Sanctions under seal until such time as it can be determined whether that information should remain confidential.<sup>1</sup>

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. RELEVANT BACKGROUND**

On April 3, 2016, the International Consortium of Investigative Journalists ("ICIJ") announced that it was in possession of what would become known as the Panama Papers: a collection of 11.5 million documents obtained from Mossack Fonseca by an anonymous source.<sup>2</sup> On May 9, 2016, the ICIJ published a searchable database containing information gleaned from the Panama Papers relating to more than 300,000 entities. Weeks before the release of that database, a handful of documents from the Panama Papers were quoted from, reported on and uploaded to the internet by various press sources, including in a report issued by the ICIJ itself.<sup>3</sup> Two of those documents are email exchanges between Mossack Fonseca personnel concerning M.F. Corporate Services (Nevada) Limited and its sole employee, Patricia Amunategui. Those two documents are Exhibits "D" and "E" to the Motion for Sanctions, and are quoted from and referred to in the Motion for Sanctions.

### **II. DISCUSSION**

Pursuant to Local Rule IA 10-5, "papers filed with the court under seal must be accompanied by a motion for leave to file those documents under seal." Although there is a strong presumption in favor of public access to court records, the Ninth Circuit has "carved out an exception" to this presumption for documents attached to a non-dispositive motion, such that "the

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<sup>1</sup> Counsel for NML has already provided an un-redacted copy of the Motion for Sanctions and Exhibits "D" and "E" to counsel for Mossack Fonseca.

<sup>2</sup> See ICIJ, The Panama Papers: An Introduction, available at <https://panamapapers.icij.org/video/>, last visited on May 24, 2016.

<sup>3</sup> See Martha Hamilton, "Panamanian Law Firm is Gatekeeper to Vast Flow of Murky Offshore Secrets," available at <https://panamapapers.icij.org/20160403-mossack-fonseca-offshore-secrets.html>, last visited on May 24, 2016.

1 usual presumption of the public's right of access is rebutted." *Kamakana v. City & Cnty. of*  
 2 *Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citing *Phillips v. General Motors Corp.*, 307 F.3d  
 3 1206, 1213 (9th Cir. 2002); *Foltz v. State Farm Mutual Auto Insurance Company*, 331 F.3d 1122,  
 4 1135 (9th Cir. 2003)). As such, a "good cause" showing under Rule 26(c) will suffice to file  
 5 under seal documents attached to non-dispositive motions. *See Kamakana*, 447 F.3d at 1180.

6 Because the Motion for Sanctions is a non-dispositive brief, NML need only demonstrate  
 7 "good cause" for the Court to permit it to file the Motion for Sanctions and Exhibits "D" and "E"  
 8 thereto under seal. *See Kamakana*, 447 F.3d at 1180. NML suspects that Mossack Fonseca will  
 9 contend that Exhibits "D" and "E" contain information subject to the attorney-client privilege.  
 10 While it is NML's position that any claim of privilege was waived,<sup>4</sup> in an abundance of caution,  
 11 NML respectfully requests that it be permitted to file these documents and an un-redacted version  
 12 of its Motion for Sanctions under seal until such time as the Court can determine whether and to  
 13 what extent these documents contain confidential information.

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20 <sup>4</sup> As discussed in the Motion for Sanctions, NML maintains that Mossack Fonseca cannot claim  
 21 that these two documents are protected by the attorney-client privilege. Both documents were  
 22 published online and have been publicly available for approximately six weeks. Given this, "the  
 23 mantle of confidentiality which once protected the documents has been so irretrievably breached  
 24 that an effective waiver of the privilege has been accomplished." *In re Grand Jury Investigation*  
 25 *of Ocean Transp.*, 604 F.2d 672, 675 (D.C. Cir. 1979) (holding that privilege was waived based  
 26 on the government's repeated (albeit mistaken) use of the documents internally and in witness  
 27 questioning in grand jury proceedings). Moreover, in the time since these two documents were  
 28 made available online, Mossack Fonseca has never asserted any claim of privilege or taken other  
 actions to claim such a protection for these documents in this matter, further undermining any  
 claim that the privilege has not been waived. *See United States v. de la Jara*, 973 F.2d 746, 750  
 (9<sup>th</sup> Cir. 1992) (citing *Grand Jury* and holding that the privilege had been waived because the  
 defendant did not immediately take action to recover the document as to which it belatedly  
 claimed privilege).

1     **III.     CONCLUSION**

2             Based on the foregoing, NML respectfully requests the Court grant it leave to file its  
3     Motion for Sanctions and Exhibits "D" and "E" thereto under seal pursuant to LR 10-5(b).

4             DATED this 24th day of May 2016.

5                             BROWNSTEIN HYATT FARBER  
6                             SCHRECK, LLP

7                             By: /s/ Nikki L. Baker  
8                                 Kirk B. Lenhard, Esq.  
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**CERTIFICATE OF SERVICE**

Pursuant to Fed.R.Civ.P.5(b), I certify that I am an employee of BROWNSTEIN HYATT FARBER SCHRECK, LLP, and that the foregoing **NML CAPITAL, LTD.'S MOTION FOR LEAVE TO FILE ITS MEMORANDUM IN OPPOSITION TO MOTION TO VACATE AND IN SUPPORT OF MOTION FOR SANCTIONS AND EXHIBITS "D" AND "E" THERETO UNDER SEAL** was served via electronic service to all electronic registered CM/ECF users in this matter.

DATED this 24<sup>th</sup> day of May, 2016.

/s/ Paula Kay  
an employee of Brownstein Hyatt Farber Schreck, LLP

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